No. 84-231

IN THE

Supreme Court of the United States

October Term, 1983

ALVIN D. HOOPER AND MARY N. HOOPER,
Appellants,

v.

BERNALILLO COUNTY ASSESSOR,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

MOTION BY AMERICAN LEGION, AND VETERANS OF FOREIGN WARS (DEPARTMENTS OF NEW MEXICO), AND THE VIETNAM VETERANS OF NEW MEXICO, INC. FOR LEAVE TO FILE AMICUS CURIAE BRIEF
and
BRIEF OF AMICUS CURIAE IN SUPPORT OF THE APPELLEE

DAVID GREER
122 Tenth Street, NW
Albuquerque, New Mexico 87102
(505) 842-5535
Counsel for Amicus Curiae

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The American Legion, and Veterans of Foreign Wars, (Departments of New Mexico), and the Vietnam Veterans of New Mexico, Inc., hereby respectfully request leave to file the attached Brief Amicus Curiae in this case. The consent of the counsel for the appellee has been obtained. The consent of the appellant was requested but refused.

This case deals with the constitutionality of the New Mexico Veterans Tax Exemption (Section 7-37-5 NMSA 1978 as

amended) which is the primary method by which New Mexico expresses its appreciation to war veterans for their service. The appellant-Taxpayer's complaint herein is directed specifically against the portion of the exemption dealing with Vietnam Era veterans; however, the grounds for his appeal apply equally against the entire veterans' tax exemption.

The appellee, Bernalillo County Assessor, is one of a group of state officials responsible for collecting tax revenues. His responsibilities do not include protecting the rights of veterans.

Our three organizations are the major advocates for the Vietnam veteran, and for all veterans' rights in New Mexico. We request permission to explain our position in support of affirmance of the New Mexico Court of Appeals, by means of the Brief attached hereto.

Respectfully submitted,

DAVID GREER
122 Tenth Street, NW
Albuquerque, New Mexico 87102
(505) 842-5535
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INTEREST OF AMICUS CURIAE

The American Legion and Veterans of Foreign Wars are chartered by Special Act of Congress, Pub. L. No. 66-47, 41 Stat. 284, to uphold and remain faithful to the Constitution of the United States. We are joined in this Brief Amicus Curiae by the non-profit corporation, Vietnam Veterans of New Mexico, the only veteran service organization directed primarily for Vietnam veterans in New Mexico. We are grateful for the opportunity to express our position here.

Our membership consists of honorably discharged or separated veterans, many of whom are entitled to receive the tax exemption involved in this appeal.

A finding that the exemption statute as presently constructed is unconstitutional will cause all the veterans of New Mexico to be harmed, both in the loss of individual benefits and in their emotional reaction to having a benefit which has been in existence for 60 years suddenly removed.

Our interest is to protect the rights of the New Mexico War Veterans and insure that they are treated fairly.

SUMMARY OF ARGUMENT

The New Mexico Veterans tax exemption contains legitimate residency requirements which have been in effect for over 60 years. These classifications were established by legislative action to define and apportion bonuses to veterans making New Mexico their home. New Mexico has never used a cash bonus to reward her veterans but instead furthers the legitimate goal of expressing its appreciation of its veterans through the exemption.

The appellant–Taxpayer (hereinafter referred to as "Taxpayer") is asking this Court to penalize New Mexico's veterans because the Veterans tax exemption is more inclusive in its definition of veterans than other states have been. In its bonus plan, New Mexico grants tax exemptions to its native sons and to other returning war veterans who choose to make New Mexico their home immediately following the cessation of hostilities during which they served.

The exemption is the only expression of appreciation many veterans have received for their service and sacrifice. Denying them the continued benefit of the exemption is not required under the Constitution and is contrary to the public policy

supporting veteran bonuses. The New Mexico Court of Appeals' decision should be affirmed.

ARGUMENT

I. THE RESIDENCY REQUIREMENTS OF § 7-37-5 N.M.S.A. 1978, AS AMENDED, DO NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Since 1921, New Mexico has recognized the need to reward veterans for the service they have given during periods of war. By special election the people of New Mexico adopted Art. VIII, § 5, of the Constitution of New Mexico providing for a Veteran Tax Exemption. In 1923, the legislature enacted the first statute creating the actual exemption. The exemption allowed a $2,000 reduction off the Taxpayer's property value. The amount of the exemption has remained the same to this date.

In 1946, the New Mexico Supreme Court interpreted the constitutional provisions involving the exemption statute and applied the benefits of the exemption to veterans of World War II. *Flask v. State*, 51 N.M. 13, 177 P.2d 174 (1946). Over the years the statute has been amended repeatedly, always maintaining the requirement that the eligible veteran has established his residency within the state immediately following the cessation of hostilities.

In *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 103, S.C., 1997 (1983), the Court stated:

> Legislatures have especially broad latitude in creating classifications in distinctions in tax statutes. (At 547)

Similarly, in *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 99 S.Ct. 2282, 60 L. Ed. 2d 870 (1979), the Court stated:

> The equal protection guarantee of the Fourteenth Amendment does not take from the States all power of classification . . .;
> When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern
> . . . .
> The calculus of effects, the manner in which a particular law reverberates in a Society, is a legislative and not a judicial responsibility. (At 272)

The *Feeney* case upheld as valid a Massachusetts statute granting a lifetime preference to veterans within the Civil Service System.

The New Mexico residency classification is not intended to harm the interest of the Taxpayer or any other Vietnam veterans, but rather is a system developed over the years to define the class of veterans which the legislature has deemed to be eligible for the exemption.

The Taxpayer's argument that the residency requirement interferes with his right to travel is mistaken. In *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 256-57, 94 S.C. 1076, 39 L. Ed. 2d 306 (1974), the Court made it clear that the degree of impact upon the right to travel would determine whether or not a state would need to demonstrate by means of the compelling state interest test their justification for the statute. In the instant case, the exemption does not arise to the level of either deterring migration, or penalizing the exercise of the right to travel, and as such is constitutionally proper.

The residency requirement within the exemption statute is the method employed by the legislature to identify the class of persons which the legislature has decided to reward. It is in the national interest to grant to veterans preferences, bonuses, and rewards for their service to country. The judicial justification for such measures are usually thought to reward the

veteran for the sacrifice of military service, to encourage further patriotic service, and to ease the transition from military to civilian life. *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 265, 99 S.Ct. 2282, 60 L. Ed. 2d 870 (1979).

New Mexico has never had a cash bonus plan for its veterans. From the period shortly following World War I to the present, New Mexico has rewarded its veterans by means of the instant tax exemption. The argument propounded by the taxpayer herein, sounds much like the position of the claimant in *Leech v. Veterans Bonus Division Appeals*, 426 A.2d 289, 179 Conn. 311 (1979). In that case, a Vietnam Era veteran was denied a cash bonus by the state of Connecticut because he did not meet their residency requirement. Connecticut required domicile within their state for one year immediately *prior* to the veteran's induction into military service. The Supreme Court of Connecticut held that a rational relationship existed between the domicile requirement and the legitimate state interest to reward veterans.

In *August v. Bronstein*, 369 F.Supp., 190 (S.D.N.Y. 1974), *aff'd*, 417 U.S. 901 (1974), New York state's veteran benefit law also required a one year domicile *prior* to induction, for eligibility. The New York residency requirement in that case was held to be constitutional after the application of the rational relationship test.

Considering the fact that classifications involving veterans' benefits which incorporate the requirement of domicile *prior* to induction have been held constitutionally valid, *Leech* and *August, supra*, one must question the Taxpayer's reasoning in attacking the New Mexico statute. New Mexico does not require prior domicile to establish eligibility for this benefit. New Mexico's veteran exemption statute defines a larger class of veterans. New Mexico historically is very supportive of our nation's warriors.

The statute does not violate any constitutional principle, and in fact serves to create a constituency of New Mexico veterans who feel secure in the vested benefit they have received. Although the amount of the exemption has not increased since it was first enacted, it does represent an emotional and psychological support for all veterans in our state. The fact that it does not grant unlimited benefits to all veterans who served during a period of armed conflict does not invalidate its positive purpose.

There is no valid distinction between the residence classification systems which were held valid in *August v. Bronstein,* 369 F.Supp. 190 (S.D.N.Y. 1974), *aff'd,* 417 U.S. 901 (1974), and *Leech v. Veterans Bonus Division Appeals,* 426 A.2d 289, 179 Conn. 311 (1979), and the New Mexico statute. New Mexico's sensitivity to the need for rewarding returning war veterans in as gracious a manner as is financially possible should not be penalized. The statute in question should be upheld.

II. THE NEW MEXICO SUPREME COURT IS THE PROPER FORUM TO DECIDE THE SEVERABILITY QUESTION.

The New Mexico Court of Appeals did not decide the severability of the residency requirement in § 7-37-5 C in their opinion denying the Taxpayer's relief. *Hooper v. Bernalillo County Assessor,* 101 N.M. 172, 679 P.2d 840 (N.M. App. 1984).

It is the opinion of the amicus curiae herein that the residency requirements were an essential part of the legislative purpose in enacting the exemption, and that it is improbable that the legislature would have enacted the exemption had there been no limitations whatsoever in respect to the residency requirements. While we would be joyful if the New Mexico legislature decided to extend veterans' exemptions to include

all New Mexico residents who served in the military during wartime, given the reality that state government expenditures must be conserved today, we recognize that the probability of such a result is minimal.

If this Court believes that the New Mexico veterans' tax exemption is constitutionally defective, then the issue of the severability of the residency requirement should be heard and decided by the New Mexico Supreme Court.

CONCLUSION

For the reasons stated above, amicus curiae herein respectfully requests this Court deny the appeal of the Taxpayer and allow New Mexico to continue to reward its veterans.

Respectfully submitted,

DAVID GREER
122 Tenth Street, NW
Albuquerque, New Mexico 87102
(505) 842-5535
Counsel for Amicus Curiae

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